

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

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UNITED STATES OF AMERICA,

v.

RICHARD M. SCRUSHY,  
Defendant.

CR-03-BE-0530-S

U.S. DISTRICT COURT  
N.D. OF ALABAMA

Reply to  
Scrushy's Opposition to Government's  
Motion to Modify Discovery Order

Comes now the United States, by and through the United States Attorney for the Northern District of Alabama, and replies to *Richard M. Scrushy's Opposition to Government's Motion to Modify Discovery Order*, filed February 9, 2004, as follows:

1. Our agreement to the Court's discovery *Order* was made before the defendant made his discovery requests. The *Order* itself omitted any reference to F.R.Cr.P. 16(a)(1)(G), which provides for the exchange of expert reports predicated on the defendant's request for the same.

2. The defendant has not made such a request. The only reason not to do so would be to shield himself from the requirement to produce a report which contains certain required information.

3. The defendant references the *Order's* requirement to exchange *Jencks* materials shortly before trial. The defendant argues that "the government is undergoing no greater discovery requirement than the Defendant," and that he will provide "expert reports" as required by *Jencks*.

4. This is somewhat misleading. Rule 16 requires a "report" which must contain certain information.<sup>1</sup> *Jencks* only requires production of "statements," which may or may not include such information. The government has the burden of proof and certain

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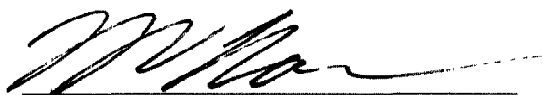
<sup>1</sup> Rule 16 requires a summary which "must describe the witness's opinion, the bases and reasons for those opinions, and the witness's qualifications."

administrative requirements which usually compel experts employed or contracted by the government to produce "statements," usually in the form of reports and/or summary charts, which are usually exhaustive. The defendant can gain an advantage by instructing his experts to "keep it all in their heads," to report to him orally, and/or to produce minimally informative reports. The United States sees no other reason for the defendant's deliberate failure to request a report under Rule 16.

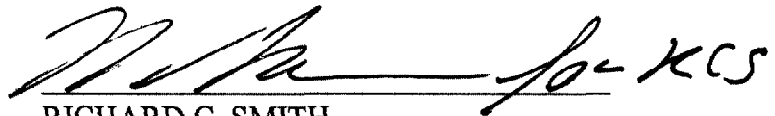
5. This is particularly important because it is not limited to the issue of reports by accounting experts. The defendant has announced his intent to attack the credibility of the pled co-conspirators, especially Bill Owens. The tape recordings between Owens and Scrushy not only corroborate everything Owens and the co-conspirators have reported, they also prove an effort by Scrushy to knowingly produce future false statements, that is, they conclusively demonstrate that Scrushy's criminal activity was ongoing. These recordings constitute powerful and unsurmountable evidence of Scrushy's guilt. Scrushy has demanded to have the original recordings examined by his own experts. With the millions of dollars he has spent on his defense, it would be an easy matter for him to hire any number of experts at any price to attack the recordings. As things stand with the discovery requirements, it would also be an easy matter, as described above, for him to conceal the results from the government until the witnesses testify, putting the government at a severe disadvantage.

For the above reasons, we request the Court to grant the government's *Motion to Modify the Discovery Order*. Respectfully submitted, this the 13<sup>th</sup> day of February, 2004.

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Certificate of Service

The United States certifies that a copy of the aforesaid has been served by mailing the same by First Class United States Mail, this date, to the defendant's attorneys of record:

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